THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 21862 of 2006

Oral order:

Assailing the award dated 11.03.2005, passed in I.D. No. 146 of 2002 by the Labour Court, Guntur, the petitioner filed the present writ petition.

The petitioner while working with the respondents-APSRTC as Electrician, on the charge that he committed theft of "fan belt" and was caught red-handed by the security personnel, an enquiry was conducted. Based on the enquiry report, the respondents issued show cause notice of removal dated 22.12.2001. The petitioner submitted his explanation. But not satisfied with the explanation, the 2nd respondent vide orders dated 04.01.2002, removed the petitioner from service. Aggrieved thereby, the petitioner preferred appeal, but the same was dismissed by order dated 31.03.2002 by the appellate authority. The review petition filed there against, was also rejected vide orders dated 16.07.2002 of the reviewing authority. The petitioner, therefore, raised an industrial dispute in I.D. No. 146 of 2002, and the Labour Court, Guntur, by reason of the award impugned in the writ petition, partly allowed the I.D., in that while setting aside the order of removal, held that the petitioner shall be deemed to have retired from service.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation. Both the counsel represent that the Labour Court, without appreciating the material and evidence on record properly, and without applying its mind to the facts of the case, has passed the impugned award.

The impugned award passed by the Labour Court is very

cryptic. It does not state whether the validity or otherwise of the enquiry, was decided as a preliminary issue, though the learned counsel for the petitioner submitted that it was held valid.

I n **Cooper Engineering Ltd., v. P.P. Mundhe**[1], the apex Court observed thus:

> "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue……"

It is surprising to note that the Labour Court has not given any finding about the validity or otherwise of the domestic enquiry. The Labour Court, after framing the point that arises for consideration, namely whether the charge against the petitioner is proved, if so, whether the punishment of removal of the petitioner, from service is in proportion to the charges, merely described the exhibits, and came to the conclusion that the old fan belt was found in possession of the petitioner while leaving the garage and that it cannot be believed that it belonged to the petitioner. Accordingly, holding that the charge against the petitioner is proved, felt that the punishment of removal from service is not in proportion to the charges. I am unable to understand on what basis the Labour Court has passed such an order. The Labour Court has neither appreciated the evidence nor dealt with the issues framed by it properly, in that, it has not assigned any reason to justify how the charge leveled against the petitioner is proved and how the punishment of removal imposed is

disproportionate. The manner, in which the Labour Court passed the impugned award, reflects that it has passed the same without applying its mind to the facts of the case.

Since the impugned award is a cryptic award and does not disclose any reasons justifying such an award, both the learned counsel for the petitioner as well as the learned Standing Counsel for the respondent-Corporation submitted that the impugned award be set aside and the matter be remanded to the Labour Court for adjudication of the matter afresh after giving reasonable opportunity to both the parties to adduce evidence.

In the above view of the matter, the impugned award cannot be sustained and the same is liable to be set aside. Therefore, the writ petition is allowed, and the impugned award is set aside. The matter is remanded to the Labour Court for fresh adjudication, after giving reasonable opportunity to both the parties to adduce evidence and after appreciation of the material placed on record. No costs.

N.V. RAMANA, J.

Date: 24th October, 2007
KSR

[1] (1975) 2 SCC 661